GOVERNMENT OF MYSORE

FOOD, CIVIL SUPPLIES AND LABOUR DEPARTMENT (LABOUR).

Labour Dispute.—Industrial Dispute between the Workmen and the Management of Jairamdas Udyog (P) Ltd., P. B. No. 853, Silver Jubilee Park Road, Bangalore-2

Award of the Labour Court, Hubli—Published.

Read the following papers:

(i) Letter No. 1670/67-68, dated 25th November 1967 from Shri Syed Azizuddin Ahmed, Presiding Officer, Labour Court, Hubli.

IN THE LABOUR COURT AT HUBLI.

Dated: 25th November 1967

Reference (ID) (LCH) No. 53 of 1967.

Present:

Sri Syed Azizuddin Ahmed, M.A., B.L. ... Presiding Officer.

Between:

The Workmen of Jairamdas Udyog (P) Ltd., represented by the Secretary, Jairamdas Udyog Employees' Association 1st Cross Road, Vinayak Building, Mill Corner, Malleshwaram, Bangalore-3. ... *I Party.*

and

The Management of Jairamdas Udoyg (P) Ltd., P.B. No. 853, Silver Jubilee Park Road, Bangalore-2. ... *II Party.*

The Government of Mysore being of the opinion that an industrial dispute exists between the workmen and the management of Jairamdas Udyog (P) Ltd., Bangalore, have reeferred the same of adjudication to this Court under section 10 (1) (C) of the Industrial Disputes Act, 1947, by their order No. LMA 315 LLD 67, dated 28th June 1967. The points of dispute referred for adjudication are as under:—

"Is the management of Jairamdas Udyog (P) Ltd., Bangalore, justified in terminating the services of Sri G.A.D' Silva, Maintanance Foreman of the Factory?

If not, to what relief the workmen is entitled?

2. The cause of the aggrieved workman has been sponsored and espoused by the Jairamdas Udyog Employees' Association, Ist Cross Road, Vinayak Building, Mill Corner, Maleswaram, Bangalore-3 represented by its Secretary. Sri M. C. Narasimhan, Advocate, Secretary, K. P. T U. C. appeared for the first Party while Sri B Gopaiaiah, Advocate, Joint Secretary, M. S. E. A, Bangalore, appeared for the second.

3. In response to the notices issued by the Court the parties have filed their pleadings, dated 2nd August 1967 and 7th August 1967 respectively. The first party has filed an additional statement dated 21st August 1967 by way of reply to the counter statement of the second party. The points of dispute specified in the order of reference were adopted as issues in the case. The representatives of the parties filed a joint-memo dated 13th November 1967 to the effect that the evidence led in Complaint No. 2/66 in ID No. 52/65 on the file of the Industrial Tribunal in Mysore, Bangalore, be treated as evidence in this case. This was allowed. 15 documents were got marked as exhibits by the first party and and 9 by the second. The representative of the second party filed 3 more documents (i) a Gazette copy of the Award in ID No. 52/65 on the file of the Industrial Tribunal in Mysore, Bangalore (ii) a Gazette copy of the Award in Complaint No. 2/66 in ID No. 52/65 and (iii) a report dated 10th December 1965 alleged to have been made by Sri D'silva recommending the lay off of a few workmen. Sri M. C. Narasimhan objected to the admissibility of these three documents. They were however taken subject to his objection.

4. There is not much dispute between the parties regarding the factual aspects of the case. Mr. D'silva was a retired employee of the Railways and was of the age of about 63 years when he joined the service of the second party. Initially he was entertained in service of the second party by its letter of appointment dated 5th April 1963 which has been filed and marked Ext. W-2. This document discloses that Mr. D'Silva was appointed with effect from 11th March 1963 on a monthly salary of Rs. 300 for a period of 3 years the first 6 months to be treated as probationery period. As about this time fortune appears to have been smiling on Mr. D' Silva. The management appears to have been so much enamoured of him that even before the expiry of the probationery period they confirmed him with effect from 1st July 1963 on a salary of Rs. 350 per month all inclusive subject to his signing on service agreement. I would do well to reproduce here this entire

document as it throws a flood of light on the subsequent conduct of the management. It runs thus :

" Dear Sir,

Reference your letter of appointment dated 5th April, 1963, your probation period of 6 months is not completed and despite this fact, the management appreciate your integrity and the keen interest you are taking in your work.

The Management send its compliments and is glad to advise that your services are confirmed with effect from 1st July, 1963 on salary of Rs. 350 (all inclusive) subject to your signing the service agreement, as per copy enclosed.

Yours faithfully,

For JAIRAMDAS UDYOG PRIVATE LTD.,

sd/ G. J. AGARWAL.

Director."

Thereupon the agrieved workman executed the contract of service dated 21st August 1963 Exh. W-1. As per this service agreement he was to serve the company for a minimum period of five years. The luck of Mr. D' Silva appears to have been on the ascendancy. By a letter dated 29th April 1965 the original of which has been filed and marked Exh W-4, the manag-ment enhanced his salary from Rs. 350 to Rs. 400 per month with effect from 1st April 1964. I shall reproduce Exh. W-4 also :

" Dear Sir,

The Management is pleased to grant you an increment in your salary from 350 to Rs, 400 P.M. with effect from 1st April, 1964.

Yours faithfully,

For JAIRAMDAS UDYOG PVT. LTD.,

sd/ G. J. AGARWAL

Director."

Now what follows is a sorrowful tale. There was an end to the happy days for Mr. D' Silva. On 13th January 1966 the

management issued a notice terminating the service of D. Silva as per Exh. W-6. It runs thus:

" Dear Sir.

Under clause 6 (d) (i) of your contract of Employment dated 21st August 1963, read with Clause 27 (i) of the Company's Standing order, you are hereby informed that your services are terminated with immediate effect, and you will be paid one month's basic pay in lieu of notice.

You are hereby called upon to hand over charge of your charge of your department to Sri. N. Subba Rao, Asst. Maintenance Engineer and obtaid a clearance certificate from him.

Thereupon to call at our Commercial office and receive payment of all your dues.

Yours faithfully,

For JAIRAMDAS UDYOG Pvt. Ltd.,
(Sd.) G. J. AGARWAL
Director.

It is this order which has given rise to the present dispute. The first party assails this order on diverse grounds the chief among them are that it is arbitrary and not *bona fide* and has been resorted to for extraneous reasons that it amounts to punishment and as such is bad in law as it was not preceded by an enquiry that it is not in consonance with the contract of service and it amounts to victimisation. It is prayed that the order of termination dated 18th January 1966 be set aside and the aggrieved workman be reinstated with continuity of service with back wages and all benefits arising therefrom and costs.

5. The defence of the second party is that the workman was a superannuated employee of the Railways and was employed on a contract basis for a period of 5 years subject to the provisions of the Standing Orders and satisfactory work. The management realised that they have made a serious mistake in depending on

his experience as later on it was found that he did not have the requisite physical and mental stamina to bear the work and responsibilities that was expected of a person in his position. He was old and worn-out and was useless for the purpose of the factory and so his services were terminated in accordance with the terms of agreement of employment. The allegation of victimisation is absolutely meaningless and the dispute has been raised to harass the second party.

FINDINGS.

6. This is a very simple dispute and the action of the management is reminiscent of the time old and discredited doctrine of hire and fire. The burden of proving that it was justified in terminating the service of Mr. D'Silva lies heavily on the management. The management's stand is that Sri D'Silva was already a superannuated person of the age of 63 years when he was entertained in the service of the second party. He was old and worn-out and the management soon realised that he did not have the requisite physical stamina to bear the work and responsibilities that was expected of a person in his position. He wasuseless for the purpose of the factory. To prop up this defence Sri B. Gopalaiah, the learned representative of the second party pressed in service the deposition of Sri G J. Agarwal, the Technical Director of the second party made in Complaint No. 2/66 in ID No. 52/65 a certified copy of which has been filed by common consent and marked Exh.W-13. Herein the witness has stated that he terminated the service of the aggrieved workman because he was short of hearing, week in eye-sight, poor in performance and unable to take the strain of work on account of old age. He came to know of these infirmities about 5 or 6 months prior to the date of termination. He further stated that Mr. D'Silva had estimated the work value done by his gang on 1st November 1965 at Rs 322. This was highly exaggerated and not true. According to his estimation the value was not more than Rs. 25. The witness is entitled to have his own opinion about the performance and infirmities of Mr. D'Silva but the point is if the workman had developed these infirmities it was the duty of the management to have subjected him to medical test. The absence of this shows that there was something rotten in the State of Denmark. I say this for one obvious reason. Shortly after his services were dispensed with by the second party

Mr. D'Silva approcahed the Works Manager of the second party for a testimonial regarding his work. The Works Manager Mr. H. Beyer, I am told was a German National working with the second party. He has issued a testimonial dated 8th February 1966. the original has been filed and marked Exh.W-9. I shall reproudce a few excerpts from this testimonial :

> " He has carried out his duties very efficiently and is a very reliable and trustworthy person ; a good controller of labour as well as a practical workman."
>
> " I can confidently recommend him to any one requiring the services of one who can be relied upon for real good service "
>
> " The termination of his services was a surprise to me as I had no previous knowledge of this, nor was I consulted in this matter, considering there was heavy work on hand at the time. "

Sri B. Gopaliah, harangued that Mr. H. Beyer was biased against the management. Hence he has issued a testimonial to the workman lauding his services. The certificate is not on the letter-head paper of the second party. Hence, no importance should be given to it. These arguments are devoid of force. A foreigner who had come to serve the management and indirectly to serve this country what bias could he have against the management. If at all he had any bias perhaps he did not like the management's hottentot way of doing things. I am told Mr. Bayer has left the management and has returned home. I cannot reconcile myself to the suggestion that Mr. Beyer had issued this testimonial simply to spite the management. The management can afford to be capricious but the same cannot be expected of Mr. H. Beyer. I am fortified in making these observation by the fact that in the first flush of enthusiasm this very witness *i.e.* G. J. Agarwal issued letters exhibits W-3 and W-4 almost singing songs in praise of Mr. D'Silva. Even before joining the second party Mr. D'Silva appears to have served in several other concerns and earned the appreciation of the managements as is borne out by the copies of testimonials which find a place in Exh. M-2. The allegation that Mr. D'Silva had exaggerated the work value done by his gang cannot offer the grist to justify his dismissal. The question is why was this major turning point in the relations between the workman and the management. This is explained by Sri D'Silva in his deposition in Complaint No. 2/66 Exh.W-12.

"On 21st December 1965, a day before, I went on leave Sri G J. Agarwal, Technical Director sent for me to his office. I went there. He asked me to certify that about 20 workmen working in the General Shift under me were not doing their work properly and that their services should be dispensed with. This he suggested me so that the maximum number of 75 persons could be retrenched according to his plan. I replied to him that I was an officer and that I would not be a party to such a thing-since in my opinion, those men worked satisfactorily. He was, therefore, annoyed. He replied that we had to part. Then I went on leave."

Sri G. J. Agarwal has denied this suggestion. However much he may deny there appears to be a semblance of truth in this. Sri Gopalaiah invited my attention to the award of the Industrial Tribunal in ID No. 52/65 published in Part IV 2-C (ii) at page 3209 of the *Mysore Gazette*, dated 27th July 1967. Herein the learned Judge has called Mr. D'Silva as a false witness. But this observation can have no bearing or relevancy in the present dispute. Thus, the theory set up by the management that Mr. D'Silva had not the requisite physical and mental stamina to bear the work and responsibilities that was expected of a person in his position falls flat on the ground. Equally so the statement that he was useless for the purpose of the company. Even long after the termination of his service Mr. H. Beyer found it possible to confidently recommend him to anyone requiring the service of one who can be relied upon for real good service. This should set at rest the controversy regarding the efficiency of the workman.

7. It was next argued by Sri B. Gopalaiah with a certain amount of vehemence that irrespective of the fact whether the workman was still serviceable for the company or not the management was perfectly justified in dispensing with his service under clause 27 (i) of the standing orders of the company. This is a very misleading argument. This sub-clause comes under the heading 'Termination of service by the company'. It runs thus:

"Subject to the provisions of Section 25-F of the Industrial Disputes Act, 1947 (i) The employment of any permanent monthly rated employee can be terminated without assigning any reason by giving one month's notice or by payment of salary/wages at the basic rate of pay

for one month in lieu of notice irrespective of the length of service of such employee with the Company."

This sub-clause cannot be read torn out from its context. It only means that in order to effect retrenchment the management need not assign any reasons. This sub-clause is loaded heavily against the workman and it should be given an interpretation in consonance with the ever changing concept of social justice. This clause cannot be read to mean that even if a workman has put in say 30 years of service with the management the later can just kick him out by just giving him one month's notice or salary or wages in lieu of notice. From the material on record one can say that the management has treated Mr. D'Silva like a door-mat. Having treated him like a frog in the chamber they have thrown him out of the management as one would throw out a fly from the milk-pot. The contract of service provides clauses for dispensing with the services of the workman. Obviously the management has not resorted to them. The management appears to be oscillating in its approach. In the letter of termination Exh. W-6 it has been clearly stated that action has been taken against Mr. D'Silva under clause 6(d)(i) of the contract of service read with clause 27(i) of the Company's standing orders. In the counter statement filed in the Court it has been specifically stated towards the end of paragraph 5 that the services of D'Silva were terminated in accordance with the terms of agreement of employment. But during the course of his arguments Sri B. Gopalaiah stated that when two remedies were available to the management it was open for them to take recourse to any one of them. The services of Mr. D'Silva could be dispensed with and were dispensed with under sub-clause (i) of clause 27 of the Company's standing orders. The Company's standing orders cannot reintroduce the doctrine of hire and fire. The aggrieved workman could not have been removed from service for no valid reason in an arbitrary way according to the contract of service.

8. The next question for consideration would be whether this act of the management amounts to victimisation. In the rulings reported in 1962 (1) LLJ P 81 and 1962(2) LLJ P. 431 it has been observed that victimisation means one of the two things *i.e.*, punishing an innocent workman because of displeasure incurred otherwise than in course of the employment or punishing a workman in a manner disproportionate to the gravity of the offence. In the instant case, admittedly no offence has been

attributed to Mr. D'Silva. He is free of any charged and yet has been removed from service. This clearly amounts to victimisation in the eye of law. Before I conclude I may point out that a long list of the following rulings was filed in the Court by Sri M. C. Narasimhan and he referred to some of them during the course of his arguments. Sri B. Gopaliah referred to a ruling reported in 1962(2) LLJ P. 216. I gave my earnest consideration to the rulings cited by the parties. I may say that no ruling can be a guide on questions of fact. Each ruling has to be viewed in the light of its own facts and circumstances.

1. 1953 (2) LLJ. 322
2. 1955 (2) LLJ. 682 and
3. 1955 (1) LLJ. 378
4. 1956 (1) LLJ. 319
5. 1958 (1) LLJ. 388 at 395
6. 1959 (2) LLJ. 84
7. 1960 (1) LLJ. 587 S.C.
8. 1960 (2) LLJ. 222 S.C.
9. 1962 (1) LLJ. 21
10. 1962 (1) LLJ. 374
11. 1964 (2) LLJ. 239
12. 1965 (1) LLJ. 39
13. 1965 (1) LLJ. 155
14. 1965 (1) LLJ. 422
15. 1965 (2) LLJ. 378
16. 1966 (1) LLJ. 774
17. 1966 (1) LLJ. 398
18. 1966 (2) LLJ. 605
19. 1961 (2) LLJ. 504
20. 1955 (2) LLJ. 731
21. 1961 (1) LLJ. 514 S.C.
22. A.I.R. 1958-All 774.

Thus, on an overall consideration of the facts and circumstances and of the evidence brought on record, the points of dispute specified in the order of reference are decided against the second party management.

AWARD

The management of Jairamdas Udyog (P) Ltd., Bangalore was not justified in terminating the services of Sri G.A. D'Silva, Maintanence Foreman of the Factory. The management shall reinstate him with continuity of service and backwages within 15 days from the date of the publication of this award in the official Gazette failing which they shall pay him his salary from the date of termination of his service till the expiry of the period of contract. The parties shall bear their own costs.

SYED AZIZUDDIN AHMED,
Presidding Officer,
Labour Court, Hubli.

Place : Hubli
Date : 25-11-1967

Reference (ID) (LCH) No. 53 of 1967.

ANNEXURE

List of witnesses examined for I Party : Nil.

List of witnesses examined for II Party : Nil.

List of documents marked for the I Party

Exh. W— 1 Agreement dated 21st August 1963 for workman.

W— 2 Appointment order dated 5th April 1963 of the aggrieved workman.

W— 3 Letter dated 14th August 1963 by second party confirming the services of workman.

W— 4 Letter dated 29th April 1963 by second party granting increment to the workman.

W— 5 Copy of notice dated 21st December 1966 by second party to the workman granting leave.

W— 6 Notice dated 13th January 1966 dispensing with the services of the workman.

W— 7 Chit dated 9th March 1963 of the second party regarding workman's interview.

Exh.	W— 8	Application dated 9th March 1963 of D'Silva.
,,	W— 9	Certificate dated 8th February 1966 issued to D'Silva by Works Manager.
	W—10	Complaint made by D'Silva in ID No. 52/65.
	W—11	Counter statement by second party to the complaint made by the workman.
	W—12	Deposition of Mr. D'Silva in Complaint No. 2/66 in ID No. 52/65 before the Industrial Tribunal, Bangalore.
	W—13	Deposition of Mr. G. J. Agarwal in complaint No. 2/66 in ID No. 52/65.
	W—14	Representation before the Conciliation Officer by the Union.
	W—15	Report of the Conciliation Officer.

List of documents marked for the second party

Exh.	M—1	Copy of application dated 27th February 1963 by Mr. D'Silva.
	M—2	Copies of certificates issued to Mr. D'Silva.
	M—3	Copy of the application dated 27th February 1963 by workman.
	M—4	Agreement dated 21st August 1963 by D'Silva.
	M—5	Copy of the standing orders of the company.
	M—6	Copy of letter dated 20th November 1965 by second party issued to the workman for explanation.
	M—7	Copy of notice dated 29th November 1965 issued to the workman by second party.
	M—8	Copy of letter dated 8th December 1965 by second issued to workman.
	M—9	Copy of notice dated 13th January 1966 dispensing with the services of Mr. D'Silva.

Place.—Hubli

Date.—25-11-1967

SYED AZIZUDDIN AHMED,
Presiding Officer, Labour Court, Hubli.

ORDER.

Bangalore, dated 29th November 1967.

S. O. 2370.—WHEREAS by State Government Order No. FCL 315 LLD 67; dated 23th June 1967, the Industrial Dispute between the Workmen and the Management of Jairamdas Udyog (P) Ltd., P. B. No. 853, Silver Jubilee Park Road, Bangalore-2, was referred to the Labour Court, Hubli for adjudication;

AND WHEREAS the Labour Court has submitted to the State Government its award in respect of the said Industrial Dispute;

NOW, THEREFORE, in exercise of the powers conferred by Section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947), the Government of Mysore are pleased to direct the publication of the said award as above, in the *Mysore Gazette*.

[No. FCL 315 LLD 67.]

By Order and in the name of the Governor of Mysore,

1515 G. G. PUROHIT, *Under Secy.*